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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,814	06/20/2003	Albert D. Johns	2421 (GP-02-5)	9255

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EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/600,814		JOHNS ET AL.	
	Examiner		Art Unit	
	Gary E. Elkins		3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-188 is/are pending in the application.
- 4a) Of the above claim(s) 33-48, 136-155 and 166-188 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32, 49-135 and 156-165 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species I, Group I in the reply filed on 21 November 2005 is acknowledged. The traversal is on the ground(s) that (1) The claims of Groups II and III have a substantial overlap with the claims of Group I. (2) Claim 136 is a linking claim with respect to all the Groups. (3) A search of the elected Group is the same as the search for all the Groups and therefor, no undue burden would be required to search and examine all the Groups as opposed to the elected Group. (4) A proper restriction requirement requires the existence of independent and distinct inventions.

2. This is not found persuasive because (1) The claims of Group II (blank) and Group III (method of manufacture) define distinct inventions which would require different searches and have different classifications. The fact that the product is defining elements and the method is defining steps of producing those elements does not constitute an overlap which would invalidate the requirement. (2) Claim 136 is not a linking claim with respect to Groups I-III. As set forth in MPEP 809, a linking claim is inseparable from the claims of the other Groups. As indicated in the restriction requirement, claim 136 is indeed separable from the other Groups. (3) The search for the elected Group is not the same as the search for the non-elected Groups. Groups II and III require searching various differing subclasses involved in the method of production. A search in the method of production is not required to properly examine the elected container claims. (4) For the reasons set forth in 802.01, the existence of independent *and* distinct inventions is not required for a proper restriction requirement.

3. It is noted that the remarks assert that claims 1-27, 49, 96-110 and 156-165 are generic to Species I and II of the application. In response, none of the listed claims are considered generic, but rather constitute subcombination claims common to each of the species. The fact that claims read upon different species does not necessarily make them generic thereto. See MPEP 806.04(d).

The requirement is still deemed proper and is therefore made FINAL.

4. Claims 33-48, 136-155 and 166-188 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 21 November 2005.

Claim Rejections - 35 USC § 112

5. Claims 1-32, 49-135 and 156-165 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims listed above are unduly multiplied insofar as they are repetitious with the result that they confuse rather than clarify the invention for which Applicant is seeking a patent. (See MPEP 2173.05(n) and 37 CFR 1.75(b)) As a result, Applicant is required to select 40 claims from the above rejected claims for prosecution on the merits. Note is made that the response must include an election of claims even though the rejection may be traversed or such response will be held non-responsive to the office action.

Conclusion

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be

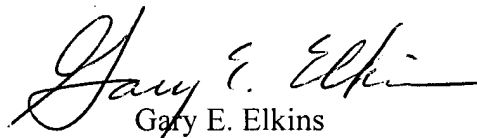
Art Unit: 3727

used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
03 April 2006